

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
OCTOBER 27, 2008**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, October 27, 2008 at 2:00 p.m. in the City Council Chamber of the Melvin Municipal Office Building. The following Board members were present: Chair John Cross, Russ Parmele, Scott Brewington, Strickland, Clinton Turner, Rick Pinto and Alternate member Brian Pearce. Staff present was Rawls Howard, Zoning Administrator, Loray Averett, Zoning Services Coordinator, and Jerry Kontos, City Attorney's office.

Chair Cross called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. Vice Chair Cross also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES OF LAST MEETING

Mr. Pinto moved to approve the minutes of the September 22, 2008 meeting, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion.

Mr. Howard and Ms. Averett were sworn in as to all testimony given by them at today's meeting.

Chair Cross welcomed Mr. Pearce as the alternate member to the Board. Mr. Pearce stated that he would not participate in this matter, but would stay to see the outcome.

Chair Cross disclosed that he works at Brooks-Pierce law firm and Mr. Brewington's wife also works there. This law firm does some of the work for the applicant's employer but they do not feel that this causes a conflict of interest at this time.

NEW BUSINESS

VARIANCE

A. BOA-08-27 704 NOTTINGHAM DRIVE ROBERT AND BARBABA BRASWELL REQUEST VARIANCES FROM THE MINIMUM SIDE AND REAR SETBACK REQUIREMENTS. VIOLATION #1: A PROPOSED SECOND STORY MASTER BATH/ROOM ADDITION OVER AN EXISTING CARPORT WILL ENCROACH 7.2 FEET INTO A REQUIRED 10-FOOT SIDE SETBACK. VIOLATION #2: THE PROPOSED ADDITION WILL ALSO ENCROACH 21.8 FEET INTO A 30-FOOT REAR SETBACK. TABLE 30-4-6-1, PRESENT ZONING RS-12, BS-10, CROSS STREET – DOVER ROAD. (DENIED)

Rawls Howard stated that the applicant is proposing to construct a master-bath/room addition over an existing attached carport, which encroaches 7.2 feet into a 10-foot side setback and 21.8 feet in to a 30-foot rear setback. The lot is located on the north side of Nottingham Road (formally named North Blair Street) south of Dover Road. The property is recorded in plat book 9, Page 77 as Lot # 9 of the Irving Park Plat dated June 1933. The lot contains approximately 9,150 square feet. It is legally nonconforming in lot area, as it is currently zoned RS-12 and does not contain 12,000 square feet. The applicant is proposing to construct a master bathroom with a closet and hallway addition as a second story on top of the existing carport. The area to be constructed will consist of approximately 560 square feet. The former property owner was

granted a variance in 1978 to attach the detached carport to the existing house. The variance was granted for side and rear setback encroachments. The plot was previously zoned R-90-S. The side setback requirements for that zoning were based on a percentage of the lot width, which at the time would have allowed the principal structure to be 5 feet from the sides. The rear setback was the same as it is now – 30 feet.

On July 1, 1992 the City did a citywide rezoning. This property was zoned R-90-S and was rezoned to RS-12. The previous zoning required 9,000 square feet for the lot and the current zoning requires 12,000 square feet. The RS-9 setbacks are lesser than the RS-12 Setbacks.

- RS-9 is 5 feet from the sides and RS-12 is 10 feet from the sides.
- RS-9 is 25 feet from the rear and RS-12 is 30 feet from the rear.

Section 30-4-11.3. Nonconforming structures.

(A) *Continuance of Nonconforming Structure*: Any nonconforming structure legally existing at the time of adoption or amendment of this Ordinance, or any nonconforming structure created by extension of the jurisdiction, may remain subject to the conditions contained in Section 30-4-11.3(B) below.

(B) *Conditions for Continuance*: Such nonconforming structures shall be subject to the following conditions:

- (1) No nonconforming structure may be enlarged or altered in any way which increases its dimensional deficiencies; however, any nonconforming structure or portion thereof may be altered to decrease its dimensional deficiencies. Any enlargement of the structure shall conform to the current dimensional requirements unless a variance is granted by the Board of Adjustment. The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-12 will typically be 3.0 units per acre or less.

Loray Averett pointed out that the proposed construction would be for a master bathroom, not a master bedroom.

Chair Cross asked if there was anyone wishing to speak on this matter.

Mr. Braswell, the applicant was sworn in and stated that he is the owner of the property at 704 Nottingham Drive. He stated that the architect, Dan Huckabee was available to answer any questions the Board members may have. Staff has covered all the technical aspects of the application. He purchased this home in 1996 and pointed out that the carport structure has a flat rubberized roof on top of the deck. Time and the elements have taken their toll on the roof and it is starting to fray on the edges and there is now some leakage. After reviewing the costs and repair options for the roof, it was determined that a new master bathroom would be more enjoyable than extending the roof line. The plans are for a master bathroom with adjoining closet space and it would stay within the perimeters of the decking, so there would not be any encroachment added. The footprint would stay exacting the same as it currently is. The roof line would change as he plans to install a pitched roof instead of keeping the current flat roof. They would not take away any of the use of their neighbor's adjoining land or encroaching upon their

use of the same. He has spoken with 3 of his 4 neighbors and those he spoke to were not opposed to the project. In response to questions, he stated that the addition has been designed from the exterior to blend into the front façade of the house and will be attached to the house. He pointed out that there is a door that runs off the current master bedroom that goes onto the rear deck and serves as fire escape access and they wish to retain that access for safety reasons.

In response to a question by Chair Cross, Mr. Howard stated that there has been a very strict interpretation in the past, that any sort of expansion which is broadly interpreted, whether up or across. In other words, if it is an enlargement of any kind, it would have to receive a variance. Chair Cross pointed out that the ordinance says you cannot enlarge or alter it in a way that increases its dimensional deficiencies. He is not sure that a variance is required in this particular case.

Mr. Howard stated that he brought up the same question and it is a matter of interpretation. He pointed out that the deficiency referred to in the original minutes referred to only the carport.

In opposition to the request, Mr. Bill Stocks, 707 Dover Road, was sworn in and stated that he has lived at this residence since 1975 and was there when the first variance was granted. The only request was a low, one-story carport which was constructed. He feels that extending the size of the dwelling does involve an increase in the encroachment into the setback line. Both of these lots are rather small and his house is about 35 feet from a fence which the previous owner installed along the property line and applicant's house is about 30 feet from the property line. The carport is much closer than that and consists of a flat structure, which is no higher than the fence that was erected by the previous owner. He presented photographs for review of the Board members and explained their significance. He feels that the request to encroach 21.8 feet into the 30 foot setback would enlarge the dwelling and constitutes something that requires a variance from the 30 foot building line. The applicant is also required to show that there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. He does not feel that there is a hardship except that the applicant will have to replace the rubber roof on the top of the carport. He does not feel that is related to building an addition to the structure. He also feels that there has been no showing of any hardship or an inability to utilize the property without this requested variance. The property has been in use since 1975 and he has seen no indication that it is not possible to enjoy it without making this addition. He also referred to the second requirement that the requested variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and feels that wiping out 2/3 of the setback with the proposed structure would not substantiate harmony in this case. He does not feel that reducing the setback by 21 feet is consistent with the spirit of the ordinance. The third requirement is that the granting of the variance assures the public safety and welfare and does substantial justice and the only reference he has heard about is the reference to a fire escape associated with the property. He does not believe that there is any less ordinary doors and windows and means to leave this property than with any other property like it. He does not feel that was the purpose of granting the variance in 1978. He feels that given the size of these lots and the proximity of the properties involved, and the fact that a two-story addition will be only 10 feet from the property line, and only 45 feet from his residence, poses a substantial risk that his property would be regarded as less attractive and he also thinks that the use of his back yard and the back porch would be impinged upon by having a dwelling that close to the property line. He does not feel it is fair to expose his property to whatever risk there is and that it would reduce the value of his property and the enjoyment of his property, when there has been no real

necessity shown. This is just a desire to have better master bedroom and bathroom and he does not feel that is what the ordinance contemplated when it provided for variances to be granted. He asked that the Board deny this request.

In response to a question by Mr. Shell, it was determined that no trees would be cut down as a result of the proposed request.

In rebuttal, Mr. Braswell reiterated his reasons for the request and answered questions posed by the Board members and presented aerial photographs showing the subject property and the adjoining properties. He pointed out that there is a garage-type structure on Mr. Stocks' property that is probably within 6 to 8 feet of the property line and he feels that a precedence has already been set where that structure is much closer to his property line and dwelling than the subject structure would be toward theirs. He asked that this be taken into consideration.

Dan Huckabee, the applicant's architect, 410 Beverly Place, was sworn in and stated that the flat roof is what started this matter. He pointed out that flat roofs are not being built anymore and they are only intending to put a pitched roof on the carport to keep the water out. In response to questions, he stated that the request is not for a full two-story addition, but only a pitched roof and would be lower than the roof of the existing house.

Also in rebuttal, Mr. Stocks stated that the garage at the rear of the property Mr. Braswell referred to has existed for about 60 years and he is not trying to expand it in any way. He feels that the proposed structure would cause the house to loom over his lot and is very undesirable from his standpoint.

Mr. Brewington pointed out that the proposed construction is not moving the structure any closer as all they are going to do is add a roof on the existing structure and moving straight up, so would not constitute the structure getting any closer to the property, it would just be higher.

Mr. Stocks stated that it would be 500 more enclosed feet toward his property with walls around it that will be the master bathroom.

At this time the public portion of the meeting was closed and Board members went into discussion about the request.

Mr. Howard pointed out that "any enlargement of the structure shall conform to the current dimensional requirements unless a variance is granted by the Board of Adjustment." Staff feels that they could build on top of the carport but they would have to meet the setback requirements of the underlying district. Meaning that they could build on top and it may look a little unusual, but they would have to meet the side setback also.

Chair Cross stated that current dimensional requirements does not mean the house with a variance, it means the house without the variance. Mr. Howard said that was how staff has looked at it in the past.

Counsel Kontos stated that there is a provision that says, "In granting a variance, the Board members prescribe such reasonable and appropriate conditions and safeguards as will assure that the use of the property for which the variance applies will be compatible with the surrounding properties." Given that, all the Board has to go by are the 1978 minutes and if you look at the decision, the decision reads, "Mr. Brooks made a motion to overrule the Building Inspector with the provision that the carport remain as such."

Mr. Pinto stated that at least a couple of times over the past few years, the Board has allowed people to do exactly what the applicant is trying to do, i.e. take a structure that is nonconforming but either has been granted a variance or has been there for so long that either it was waived or something, and allowed them a variance with the thought that as long as they are not changing the footprint, it is probably okay, but he is not sure that there has been a situation where it would actually going to block a view or be a significant addition. He feels that this is a little bit different situation.

Mr. Brewington pointed out that when the Board hears opposition from neighbors, that lends a lot to his decision.

Mr. Pinto pointed out that the Board must also consider "no reasonable use of the property" and he does not feel that requirement has been met.

After some discussion, Mr. Brewington moved that in the matter of BOA-08-27, 704 Nottingham Drive, the findings of fact as presented by staff be incorporated into the findings and the Zoning Enforcement Officer be upheld and the variance denied, as if the applicant complies with the provisions of the ordinance, he can make reasonable use of the property because currently the structure is a carport and it has been demonstrated that this property can be improved to maintain its current use; the hardship for which the applicant complains does not result from the unique circumstance related to the applicant's property because given that the current use of the property, a previous variance was granted and as interpreted, for use as a carport does not include the proposed use of an additional bathroom; the hardship does not result from the application of this ordinance to the property because there is a current use in place for the structure as it is; the hardship is the result of the applicant's own actions because by approving the variance is not in harmony with the general purpose and intent of the ordinance and does not preserve its spirit because if would be increasing the size of the space above the existing carport; granting the variance does not assure the public safety and welfare and does not do substantial justice does not move to improve the overall public safety and welfare of the neighborhood but just increases the livability of the current space, seconded by Mr. Shell. The Board voted 7-0 in favor of the motion. (Ayes: Cross, Brewington, Strickland, Shell, Parmele, Turner and Pinto. Nays: None.)

OTHER MATTERS:

RULES OF PROCEDURE

Chair cross stated that the Rules of Procedure were given to Board members a couple of months ago and everyone has had an opportunity to review them, with a few revisions. He asked that the Board make a motion to accept them at this time.

Mr. Pinto moved to accept the Rules of Procedure, as submitted, seconded by Mr. Brewington. The Board moved 7-0 in favor of the motion. (Ayes: Cross, Brewington, Turner, Shell, Strickland, Parmele and Pinto. Nays: None.)

Mr. Howard stated that the last page must be reprinted and then signed by the Chair. He would submit that at the next meeting.

DISCUSSION CONCERNING CONFLICT OF INTEREST

The Board members stated that they knew that each case would be unique and different, but if the Board members apply the standard of a direct financial interest, it could be more broadly interpreted. Several scenarios were discussed. It was pointed out that there may be two types of Conflict of Interest because of the requirements by the Bar Association related to attorneys who serve on the Board and then, to set aside those requirements, to act only as a Board member.

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There being no further business before the Board, the meeting adjourned at 3:14 p.m.

Respectfully submitted,

John Cross, Chairman
Greensboro Board of Adjustment

JC/jd